

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

Ja'Cory S. Foster,)
Plaintiff,) Civil Action No. 6:14-cv-03902-JMC
v.)
Lt Audrey Price,)
Defendant.)

)

ORDER

Plaintiff, proceeding *pro se*, brought this action seeking relief pursuant to 42 U.S.C. § 1983. This matter is before the court for review of the Magistrate Judge's Report and Recommendation (ECF No. 37), filed on May 6 2015, recommending that Plaintiff's action (ECF No. 1) be dismissed for failure to prosecute and Defendant's Amended Motion for Summary Judgment (ECF No. 28) be rendered moot.

The Magistrate Judge's Report is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court, which has no presumptive weight—the responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

The Magistrate Judge entered an order in this case on March 5, 2015, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the importance of him

filing an adequate response to Defendants' Amended Motion for Summary Judgment (ECF No. 28) and of the need for him to file an adequate response. (ECF No. 29.) Plaintiff still failed to respond to Defendants' Amended Motion for Summary Judgment.

The Magistrate Judge thus dismissed plaintiff's action pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. (ECF No. 37 at 2 (considering "(1) the degree of plaintiff's responsibility in failing to respond; (2) the amount of prejudice to the defendant; (3) the history of the plaintiff in proceeding in a dilatory manner; and, (4) the existence of less drastic sanctions other than dismissal," as instructed by *Davis v. Williams*, 588 F.2d 69, 70 (4th Cir. 1978))).) The Magistrate Judge explained:

In the present case, the plaintiff is proceeding *pro se*, and he is thus entirely responsible for his actions. It is solely through the plaintiff's neglect, and not that of an attorney, that no responses have been filed. Meanwhile, the defendant is left to wonder when the action against her will be resolved. The plaintiff has not responded to the defendant's motion for summary judgment or the court's orders requiring him to respond. Accordingly, the undersigned concludes the plaintiff has abandoned his lawsuit. No other reasonable sanctions are available.

(*Id.*)

Upon review of the Report and the record in this case, the court agrees with the Magistrate Judge's conclusion in this regard. This court therefore **ADOPTS** the Magistrate Judge's Report and Recommendation (ECF No. 37). It is therefore **ORDERED** that Plaintiff's action (ECF No. 1) be **DISMISSED** for failure to prosecute and Defendant's Amended Motion for Summary Judgment (ECF No. 28) be rendered moot.

IT IS SO ORDERED.



United States District Judge

October 16, 2015
Columbia, South Carolina